

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4053 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KALIDAS MAGANBHAI @ CHATUR VASAVA

Versus

DISTRICT MAGISTRATE BHARUCH

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Appearance:

MR SATISH R PATEL for Petitioner

MR NIGAM SHUKLA, A.G.P. for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 15/10/96

ORAL JUDGEMENT

Through this Special Civil Application, the detention order dated 19th April, 1996 passed by the District Magistrate, Bharuch under the provisions of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA Act" for short) has been sought to be challenged. The detention order dated 20th April, 1996 was executed on 21st April, 1996 and since then the petitioner is under

detention lodged at Bhavnagar Jail, Bhavnagar.

The present Special Civil Application was filed on 14th June, 1996 and on 17th June, 1996 rule returnable by 9th July, 1996 was issued but so far neither any reply has been filed on behalf of the respondents nor any affidavit in reply has been filed by the detaining authority.

The detention order has been passed by making reference to the three criminal cases pending against the petitioner for the offences under the Indian Penal Code and the petitioner's criminal activities have also been disclosed by the four witnesses who made the statements on 20th February, 1996, 6th March, 1996, 21st March, 1996 and 3rd April, 1996.

The detention order has been challenged on several grounds but the learned Counsel for the petitioner has submitted that this petition is capable of being disposed of on the sole ground that the petitioner's right to make effective representation guaranteed under Article 22(5) of the Constitution of India has been violated inasmuch as his representation dated 20th May, 1996 made to the Home Ministry through his Advocate has not been decided till this day. The factual averments made in this regard in paragraph 12 of the petition have not been controverted by filing any reply or even orally at the time of arguments and Mr. Shukla has submitted that he does not know the fate of the representation. In this view of the matter it is clearly established that the petitioner's right under Article 22(5) of the Constitution of India has been infringed and the detention of the petitioner cannot be allowed to continue.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 19th April, 1996 passed by the District Magistrate, Bharuch, is hereby quashed and set aside. The detention of the petitioner is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.

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